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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

11 STATE OF WASHINGTON, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPARTMENT
OF HOMELAND SECURITY, a
15 federal agency, et al.

16 Defendants.

NO. 4:19-cv-05210-RMP

DECLARATION OF LACY
FEHRENBACH IN SUPPORT OF
PLAINTIFF STATES' MOTION
FOR § 705 STAY PENDING
JUDICIAL REVIEW OR FOR
PRELIMINARY INJUNCTION

NOTED FOR: October 3, 2019
With Oral Argument at 10:00 a.m.

17 I, Lacy Fehrenbach, declare as follows:

18 1. I am over the age of 18, competent to testify as to the matters herein
19 and make this declaration based on my personal knowledge.

20 2. I am the Assistant Secretary for the division of Prevention and
21 Community Health (PCH) at the Washington State Department of Health (DOH).
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1 I have held this position since November 1, 2018. Prior to that, I served as the
2 Director of the Office of Family and Community Health Improvement in PCH for
3 two and a half years. Prior to that, I worked at the Association of Maternal and
4 Child Health Programs, the Association of State and Territorial Health Officials,
5 and an infectious disease laboratory at the Genetics and IVF Institute. I earned a
6 master of public health degree from the George Washington University. I also hold
7 a Bachelor of Science degree in molecular and cell biology from Texas A&M
8 University. I am certified in public health, and possess 15 years of experience in
9 public health policy and administration.

10 3. As Assistant Secretary of Health, I work directly with the Secretary
11 of Health and members of the agency executive team on high-level policy and
12 strategic issues. I lead PCH, which includes four offices, more than 200 staff
13 members, and a wide range of programs and projects. PCH oversees a broad
14 portfolio of services and works extensively with state, local, tribal and
15 community partners to improve the health of all Washingtonians. The biennial
16 budget for PCH is \$648.9 million, including \$390.9 million in federal funding.

17 4. DOH is Washington's statewide public health agency. It is within in
18 the executive branch, with the Secretary of Health reporting directly to the
19 governor. DOH programs and services help to prevent illness and injury, promote
20 healthy places to live and work, provide information to help people make good
21 health decisions, and ensure our state is prepared for emergencies. PCH has
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1 programs and services in the following major areas: reproductive health; maternal
2 and child health; nutrition services; immunizations; cancer and other chronic
3 disease prevention and control; and injury and violence prevention. These
4 programs and services work with local partners and services providers to enhance
5 the health of individuals, families, and communities and to eliminate health
6 inequities. PCH administers the following direct service programs: The Special
7 Supplemental Nutrition Program for Women, Infants, and Children (WIC),
8 Supplemental Nutrition Assistance Program-Education (SNAP-Ed), Vaccines
9 for Children, Family Planning, and Breast, Cervical, and Colon Health Program
10 (BCCHP).

11 5. I understand that the U.S. Department of Homeland Security has
12 issued a new regulation on the public charge ground of inadmissibility under the
13 Immigration and Nationality Act, and I have reviewed it. As I understand it, the
14 Public Charge Rule would allow the federal government to consider a person's past
15 use of certain public benefits, including certain specified federal programs and state
16 cash assistance programs for income maintenance, as a negative factor in an
17 application for lawful permanent residency, a new visa, or for an extension of or
18 change of stay from an existing visa. As a result of that change, I believe the Public
19 Charge Rule will cause confusion about which programs or services might count
20 against their or their family members' ability to lawfully reside or visit the United
21 States and create a chilling effect on enrollment and participation in preventive
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1 health programs for which they are eligible, including those that are not among
2 the public benefits specified by the rule. These individuals and their families will
3 not receive immunizations, cancer screenings and early treatment where needed,
4 or they may give up access to family planning or supplemental nutrition services.
5 This will worsen health outcomes for these individuals, their families, and
6 communities and in many cases, require that they receive higher levels of care.
7 This will increase or shift costs to other health care and other safety net programs.

8 **Description of Relevant Program**

9 6. WIC provides nutritional assistance, breastfeeding support,
10 referrals, and education to pregnant women, newborn infants, and children up to
11 age five years. Participants receiving WIC may qualify for the program through
12 adjunct eligibility because they are qualified for Medicaid Title 19, State or
13 Federal Non-Title 19, Temporary Assistance for Needy Families (TANF),
14 SNAP, or Food Distribution Program on Indian Reservations (FDPIR).
15 Medicaid, TANF, and SNAP are all specified public benefits under DHS's public
16 charge rule. The Washington State WIC Farmers Market Nutrition Program
17 works to increase intake of fresh fruits, vegetables, and herbs among WIC
18 participants.

19 7. Participants in Washington's WIC qualify due to income, nutritional
20 risk, and status as a pregnant woman, or child aged birth to five years.
21 Washington WIC does not collect information about citizenship status when
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1 determining eligibility. Income eligibility for Washington WIC is 185% of the
2 federal poverty level. WIC Farmers Market Nutrition Program eligibility is the
3 same as WIC eligibility so far as funds permit.

4 8. Washington WIC serves approximately 275,000 unique participants
5 annually, including for prenatal nutritional assessment and supplemental food
6 prescriptions, for infants (whether breastfeeding, partially breastfeeding, or
7 formula-fed), and children to age five years. About half of the infants born in
8 Washington State receive WIC benefits. Washington WIC families received 1.4
9 million referrals to social, medical, and food assistance programs in 2017, and
10 over 637,000 nutrition education sessions, including almost 63,000 Registered
11 Dietician appointments for clients at high nutritional risk. In addition, 43,500
12 WIC participants received Farmers Market Nutrition Program benefits in 2017.

13 9. Washington WIC is funded by United States Department of
14 Agriculture under Section 17 of the Child Nutrition Act of 1966, as amended.
15 Washington state receives approximately \$125.5 million annually, including
16 administrative funds and food funds. State funds are not used for Washington
17 WIC services, except that some state funds are used to supplement federal
18 funding for the Farmers Market Nutrition Program.

19 10. SNAP-Education (SNAP-Ed) is the education and public health arm
20 of the SNAP program. SNAP-Ed works to make SNAP a more effective,
21 health-promoting support system for our nation's low-income individuals, youth,
22

1 and families. SNAP-Ed provides programs to SNAP-eligible participants.

2 11. To encourage healthy living in low-income communities SNAP-Ed
3 provides evidence-based nutrition education programs directly to SNAP-eligible
4 participants in conjunction with coordinating wider community and public health
5 approaches and multi-level interventions that guide local policies, organizational
6 systems, and environments to support health and prevent obesity. In Washington,
7 in FFY17, 67,640 people participated in SNAP-Education nutrition education
8 classes and public health strategies reached an estimated 741,332 Washington
9 residents. About 65% of SNAP-Ed participants in Washington are children.

10 12. SNAP-Ed is fully federally funded. Washington State receives
11 approximately \$9.6 million annually in SNAP-Ed funding allocations. State
12 funds are not used for Washington SNAP-Ed services.

13 13. Washington's Family Planning Program delivers family planning
14 services, including a broad range of contraceptives, counseling on reproductive
15 health and other medical issues, testing for STIs and HIV, and screening for
16 human papillomavirus (HPV) and cancer, for people with low incomes.

17 14. To qualify for Washington State's Family Planning Program,
18 including sliding scale discounts, clients must have an income equal to or lower
19 than 250% of the Federal Poverty Level.

20 15. BCCHP provides cancer screening and diagnostic services for
21 clients who are ineligible for Apple Health (Medicaid) or Medicare, are uninsured
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1 or underinsured and have an income equal to or below 250% FPL. Funding from
2 a private foundation allows services for patients with an income up to 300% FPL.
3 Clients must be 21-64 to receive breast and cervical services (and older if
4 ineligible for Medicare) and 50-64 for colorectal (older than 64 if ineligible for
5 Medicare). If a client is diagnosed with breast or cervical cancer, BCCHP
6 navigators apply for coverage under the Breast and Cervical Cancer Treatment
7 Program (BCCTP). BCCTP is administered by the WA State Health Care
8 Authority (HCA) and allows State or Federal Medicaid coverage for clients
9 diagnosed with breast or cervical cancer. BCCHP provides navigation services
10 such as completing re-enrollment paperwork to ensure continued access to the
11 treatment coverage. The Washington Administrative Code (WAC) 182-505-0120
12 defines the program requirements. BCCHP sets income and resource eligibility
13 requirements and partners with HCA's Medical Eligibility Determination
14 Services for enrollment and renewal. There is no federal statute or regulation
15 directed at treatment coverage for patients diagnosed with colorectal cancer.
16 Colorectal cases are navigated into charity care programs at local hospitals or can
17 be covered under the Alien Emergency Medical program, if applicable.

18 16. BCCHP is funded by state, federal and foundation dollars for breast
19 and cervical screening (\$5.7 Million Federal) and federal funds only for
20 colorectal (\$1.2 million federal).

21 17. The Office of Immunization and Child Profile promotes on-time
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1 immunizations to prevent diseases, including the purchase and distribution of
2 recommended vaccines for all children and uninsured or underinsured adults. We
3 also supply limited vaccine for anyone impacted by a disease outbreak.

4 18. State-purchased vaccines are available for all children from birth
5 through age 18. There are no citizenship requirements to access vaccines
6 purchased by the State. Funding to purchase vaccines comes from the state (\$65
7 million) and federal funding (\$97 million). The federal funding is from the
8 Vaccines for Children program and 317 vaccine funding. A significant amount
9 of funding comes from the federal Vaccines for Children program and 317
10 Vaccine funding. Vaccines for Children funding is used for children who are
11 younger than age 19 and Medicaid-eligible, uninsured, underinsured or American
12 Indian or Alaska Native. 317 funding is used for uninsured and underinsured
13 adults including immigrants and refugees if not otherwise covered by health
14 insurance. 317 funding can also be used for any person during a disease outbreak,
15 regardless of citizenship or health insurance status.

16 19. Each of these programs is likely to be harmed by the Public Charge
17 Rule.

18 20. WIC is not specifically covered by the Public Charge Rule, but
19 because programs like SNAP and Medicaid which offer adjunct eligibility for
20 WIC participation are included in the rule, we foresee a high likelihood that WIC
21 enrollment and participation will be negatively impacted by the Rule.
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1 21. Moreover, WIC clinic coordinators in Washington have reported to
2 DOH that participants have requested to be removed from the program and their
3 record of participation erased, out of concern participation in WIC may
4 complicate efforts to advance residency or citizenship status. Participants made
5 these requests after notice of the proposed rule, and additional participants have
6 made these requests after the final rule was issued.

7 22. SNAP is specifically covered by the Public Charge Rule. As a result,
8 the Rule is likely to discourage immigrants in Washington from participating in
9 the SNAP-Ed program, though it is not included in the Public Charge Rule's
10 definition of "public benefit."

11 23. Additionally, the State-funded Fruit and Vegetable Incentives
12 (FINI) Program provides individuals who use SNAP with extra benefits to
13 specifically purchase healthy fruits and vegetables. One aspect of that program is
14 a fruit and vegetable prescription program. Enrollment in SNAP is currently a
15 prerequisite to participation in the FINI Program. Healthcare providers have
16 reported that their patients have declined to sign up for SNAP (a requirement to
17 access FINI programs) because of the potential repercussions of the Public
18 Charge Rule.

19 24. Washington WIC and Washington SNAP-Ed do not collect
20 information about citizenship or immigration status of participants per federal
21 rules. In 2015, about 13.7% of Washington residents were born outside the
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1 United States. 46.8% of this number were naturalized citizens in 2015. This
2 means about 530,000 Washingtonians were non-naturalized immigrants in 2015.
3 Extrapolation from these figures indicates that potentially about 5,500 newborns
4 in Washington State are born annually into families that might be affected by the
5 rule.

6 25. The Family Planning Program and BCCHP programs are not
7 specifically covered by the rule, but there is anecdotal evidence from both
8 programs that participants are fearful about the immigration consequences of the
9 Public Charge Rule. In 2017, Washington's family planning program served
10 approximately 91,329. In 2017, BCCHP covered the cost of screening for
11 approximately 8,213 breast and cervical clients and 1,891 colorectal clients.

12 26. The number of potentially affected enrollees in Washington's
13 Family Planning Program is not known.

14 27. Immunizations are not specifically covered by the rule. However,
15 because of the inclusion of Medicaid and other health insurance programs we
16 anticipate that a substantial number of Washington residents will forego access
17 to immunizations and coverage due to the Public Charge Rule.

18 28. The number potentially impacted for vaccine purchasing or access
19 is unknown. Office of Immunization and Child Profile does not collect
20 information about citizenship or immigration status.

21 29. BCCHP has learned from one of our Federally Qualified Health
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1 Center partners that their BCCHP client numbers have declined since hearing
2 about the proposed rule, a trend they attribute at least in part to the Public Charge
3 Rule; clients have inquired whether using cancer screening services will affect
4 their immigration status. We have also received emails from our partners at
5 Public Health Seattle and King County and Citrine Health, reporting that clients
6 had asked if their services will impact their immigration status.

7 30. The Breast, Cervical, and Colon Health program does not collect
8 data on citizenship status for screened clients in accordance with Executive Order
9 1701. However, our clients are largely from populations that may feel threatened
10 by the rule change. Roughly 85% of BCCHP clients have a primary language
11 other than English.

12 **Harms to Agency Mission or Broader Harms**

13 31. The Public Charge Rule will have a significant negative impact on
14 the Department of Health's mission to protect and improve the health of all
15 people in Washington State.

16 32. In Federal Fiscal Year 2017, Washington WIC served 274,888
17 participants. Nearly 48% of these women and 50% of these children were at high
18 nutrition risk, which means they have anemia, are underweight, or have a history
19 of pregnancy complications or poor pregnancy outcomes. The cost of food
20 insecurity in the nation is \$167 billion, and the cost of obesity is \$147 billion.
21 WIC, WIC Farmers Market Nutrition Program, and SNAP-Ed all work to reduce
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1 both food insecurity and obesity. WIC improves pregnancy and birth outcomes,
2 and rates of breastfeeding, healthy weight, and meeting developmental
3 milestones. In the past twenty years, WIC has increased breastfeeding rates
4 nationally by 29% among WIC participants. Breastfeeding can reduce the risk of
5 breast and ovarian cancer in mothers, as well as reducing the risk of type 2
6 diabetes and post-partum depression. For babies, breastfeeding may reduce risks
7 of obesity, lower respiratory infections, Type 2 diabetes, asthma, and Sudden
8 Infant Death Syndrome (SIDS). Participation in WIC has been shown to lower
9 infant mortality, reduce the rate of low birth-weight babies by 25%, and reduce
10 the rate of very low birth-weight babies by 44%. Pregnant women participating
11 in WIC have longer pregnancies, resulting in fewer premature births, and are
12 more likely to receive adequate prenatal care. Participation in WIC during both
13 the prenatal and postpartum periods results in women with higher hemoglobin
14 levels, a lower likelihood of obesity, and healthier babies than women who did
15 not participate in WIC. WIC provides referrals to additional health resources to
16 meet individual family needs.

17 33. If families decline access to WIC, WIC Farmers Market Nutrition
18 Program, or SNAP-Ed out of concern that participation may have negative
19 consequences for their immigration plans, status, or progress, this will result in a
20 loss of direct food support, medical and social service referrals, breastfeeding
21 counseling and support, and nutrition education to families at risk of serious,
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1 negative health outcomes. We would expect to see an increase in food insecurity
2 which, combined with the chilling effect on participation in the school lunch and
3 school breakfast program, would severely impact children in Washington State.

4 34. Studies show that Family Planning Services help prevent negative
5 health consequences of unwanted childbearing. Parents of unwanted childbearing
6 have higher incidents of depression and are more likely to engage in neglect.
7 Studies show that increased incidents of unwanted childbearing happens to those
8 below the poverty line, even though the parents want the same number of children
9 as those in higher economic demographics.

10 35. We estimate that in 2017 Washington's Family Planning Program
11 services prevented 18,150 unintended pregnancies; 8,550 unplanned births; 6,140
12 abortions and 1,090 unplanned preterm/low birth weight births. In addition, these
13 services prevented 1,030 chlamydia infections, 60 gonorrhea infections and 10
14 HIV infections. If fewer people seek services due to fear of deportation or denial
15 of future citizenship, we would see an increase in unintended pregnancies and the
16 adverse maternal, infant, and child health outcomes associated with them as well
17 as higher cases of sexually transmitted infections.

18 36. The early detection of cancer programs were created to address
19 cancer burden, save lives and reduce healthcare costs. A late stage cancer
20 diagnosis can be costly. For example, the cost of breast cancer has been noted in
21 one study as more costly with later stage advanced diagnosis, with an average
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1 cost in the year after diagnosis of \$60,637, \$82,121, \$129,387, and \$134,682 for
 2 stage 0, I/II, III, and IV, respectively.¹ One federally qualified health center that
 3 partners with us reported a decline in their BCCHP clients accessing screening
 4 services since hearing about the proposed rule. Fear of the rule change and its
 5 effects on utilizing cancer screening services for people of a variety of citizenship
 6 statuses can lead to grave consequences both in lives lost from treatable cancers
 7 and intensive financial costs of late stage treatment and related care.

8 37. Most vaccine-preventable diseases are highly contagious and can
 9 cause both short and long-term impact on individuals creating ongoing health
 10 risks and impact. Disease prevention is dependent upon access to vaccines and
 11 high vaccination rates. Use of vaccine funding is critical to provide community
 12 immunity against these diseases to limit their spread and impact on the
 13 population. By contrast, discouraging immigrants from obtaining vaccines
 14 because of potential adverse consequences to their immigration status could lead
 15 to higher rates of contagion and worse community health.

16 38. Broadly speaking, managing disease outbreaks requires willing
 17 participation on the part of all potentially affected communities. If immigrants
 18 are unwilling to receive care or provide complete contact information or other
 19

20 ¹ Blumen H, Fitch K, Polkus V. Comparison of Treatment Costs for Breast
 21 Cancer, by Tumor Stage and Type of Service. Am Health Drug Benefits.
 22 2016;9(1):23–32. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4822976/>

1 critical information due to fear that it will affect their immigration status, this will
2 likely hamper DOH's efforts to manage outbreaks, impact comprehensive case
3 review, and limit suspect case identification, with severe ramifications on public
4 health and safety.

5 **Pecuniary or Direct Harms to Agency**

6 39. If participation in WIC or SNAP-Ed decreased due to concerns
7 about the impact of the public charge rule, families would likely transfer their
8 needs to local food pantries, free or low-cost medical services, and would likely
9 experience worse health outcomes, that would require intervention by higher
10 levels of care. Increases in unintended pregnancy and sexually transmitted
11 infections would increase costs to Medicaid and/or other safety net health care
12 and social service programs. These could include costs for the individual eligible
13 for family planning services and for children born to that client. Delay or lack of
14 cancer screening will delay diagnoses requiring a higher level of care and could
15 increase costs to Medicaid and/or other safety net health care programs.

16 40. Federal funds for Washington WIC and SNAP-Ed are tied to
17 enrollment. Decreases in WIC and SNAP-Ed enrollment and participation place
18 Washington WIC and SNAP-Ed at risk of decreased federal funding for the
19 programs. State funds are not currently used to support these programs, and may
20 not be available to mitigate the loss of federal funds. Furthermore, federal funding
21 is generally not sufficient to cover local administration of the programs, and a
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1 decrease in federal funding due to decreased caseload would further increase the
2 burden on local agencies to supplement program costs.

3 **Harms to Individuals Served by Agency**

4 41. Between 2013 and 2017, Washington WIC observed about 5% to
5 6% decrease annually in WIC participation. However, since initial reports of
6 changes to the scope of public charge in early 2017, WIC participation has
7 dropped by about 10%, or nearly double the expected decrease. For SNAP-Ed,
8 we noticed a 56% decrease in participation by adults (18 and older) from 2017 to
9 2018. There weren't any participation changes in those under 18 because those
10 program activities occurred at school during regular class time.

11 42. The observed decrease in WIC participation since discussion of the
12 proposed rule has been double the normal annual decrease. It thus appears that
13 the chilling effect of implementing this rule would mean approximately 13,750
14 individuals who might otherwise have used WIC services may not participate in
15 Washington WIC annually.


16 43. The benefits of WIC and SNAP-Ed participation would not be
17 received by families who choose not to enroll or use Washington WIC and
18 SNAP-Ed services. Thus, under the Public Charge Rule, it is fairly anticipated
19 that infant and maternal deaths would increase, birth outcomes would be worse,
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21
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1 and childhood obesity, diabetes, and failure to meet developmental milestones
2 would all increase.

3 44. The Public Charge Rule, particularly the inclusion of Medicaid, is
4 likely to deter clients from seeking services, particularly those diagnosed with
5 breast and cervical cancer seeking treatment, resulting not only in higher
6 mortality rates, but also higher costs. As noted by the World Health Organization,
7 “Detecting Cancer early also reduces cancer’s financial impact: not only is the
8 cost of treatment much less in cancer’s early stages, but people can also continue
9 to work and support their families if they can access effective treatment in time.”²

10 I declare under penalty of perjury under the laws of the State of
11 Washington and the United States that the foregoing is true and correct.

12 DATED this 31st day of August, 2019, at Tumwater, Washington.

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14 
15 _____
16 LACY FEHRENBACH
17 Assistant Secretary, Prevention and Community
18 Health, Washington State Department of Health

19 _____
20 ² “Early Cancer Diagnosis Saves Lives, Cuts Treatment Costs.” World
21 Health Organization, World Health Organization. Source: [www.who.int/news-](http://www.who.int/news-room/detail/03-02-2017-early-cancer-diagnosis-saves-lives-cuts-treatment-costs)
22 [room/detail/03-02-2017-early-cancer-diagnosis-saves-lives-cuts-treatment-](http://www.who.int/news-room/detail/03-02-2017-early-cancer-diagnosis-saves-lives-cuts-treatment-costs)
[costs.](http://www.who.int/news-room/detail/03-02-2017-early-cancer-diagnosis-saves-lives-cuts-treatment-costs)

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 6th day of September, 2019, at Tumwater, Washington.

/s/ Sara M. Cearley
SARA M. CEARLEY
Paralegal